



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,690	09/11/2000	Mark John Berry	PM271641	9282

9629 7590 07/15/2003

MORGAN LEWIS & BOCKIUS LLP
1111 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004

EXAMINER

WHITE, EVERETT NMN

ART UNIT	PAPER NUMBER
----------	--------------

1623

DATE MAILED: 07/15/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/600,690

Applicant(s)

BERRY ET AL.

Examiner

EVERETT WHITE

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. The amendment filed April 30, 2003 has been received, entered and carefully considered. The amendment affects the instant application accordingly:
 - (A) Claims 1, 8, 10, and 11 have been amended.
 - (B) Comments regarding Art Rejection have been provided drawn to:
 - (a) 112, 2nd paragraph rejection, which has been withdrawn;
 - (b) 102(b) rejection, which has been maintained for the reasons of record;
 - (b) 103(a) rejections, which have been maintained for the reasons of record.
2. Claims 1 and 5-11 are pending in the case.
3. The text of those sections of title 35, U. S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

4. Claims 1 and 5-11 stand rejected under 35 U.S.C. 102(e) as being anticipated by Cottrell et al (US Patent No. 5,801,116) for the reasons already of record on pages 3 and 4 of the Office Action mailed January 3, 2003.

Response to Arguments – 35 USC § 102

5. Applicant's arguments filed April 30, 2003 have been fully considered but they are not persuasive. Applicants argue against the rejection of the claims over the Cottrell et al patent on the grounds that even-though the Cottrell et al patent discloses that the polysaccharide thereof would absorb a fragrance to simply give a particle of polysaccharide material carrying perfume, such a particle would not, in addition, have a polysaccharide as recited in present Claim 1 physically or chemically attached to a particle carrying perfume. Applicants also argue that Cottrell et al does not disclose all of the components of Applicants' instant claimed conjugate because there is no disclosure in the reference of a particle carrying perfume, which polysaccharide is physically or chemically attached. Applicants argue that the Cottrell et al patent simply discloses particles of polysaccharide material, not particles with polysaccharide material attached. The arguments presented by Applicants are not persuasive because the Cottrell et al patent discloses polysaccharides that are analogous to the

Art Unit: 1623

polysaccharides set forth in the instant claims. The polysaccharide of the Cottrell et al patent, which absorbs a fragrance to simply give a particle of polysaccharide material carrying perfume anticipates the instantly claimed polysaccharide which is physically attached to a particle carrying perfume since the phrase "physically attached" does not distinguish from the compositions of the Cottrell et al patent having each of the instantly claimed components as a component of the composition set forth in the Cottrell et al patent. The Examiner is required to give the broadest interpretation of terms set forth in claimed inventions and the instant specification does not define "physically attached" in a way that can be interpreted as having a different meaning from the combination of the components in the compositions set forth in the Cottrell et al patent, especially when the components combined with the polysaccharides of the Cottrell et al patent are in the form of liquids or gels, which can be interpreted as components that are physically attached. Accordingly, the rejection of Claims 1 and 5-11 under 35 U.S.C. 102(e) as being anticipated by the Cottrell et al patent is maintained for the reasons of record.

Claim Rejections Over the Cottrell et al Patent - 35 USC § 103

6. Claims 1, 6-9 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cottrell et al (US Patent No. 5,801,116) for the reasons disclosed on pages 5 and 6 of the Office Action mailed January 3, 2003.
7. Claim 10 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Cottrell et al (US Patent No. 5,801,116) for the reasons disclosed on pages 6 and 7 of the Office Action mailed January 3, 2003.

Response to Arguments Against the Cottrell et al patent – 35 USC § 103

8. Applicant's arguments filed April 30, 2003 have been fully considered but they are not persuasive. The arguments presented in the above rejection of the Claims as being anticipated over the Cottrell et al patent can equally be applied to the arguments presented by Applicants against the rejection of the claims as being obvious over the Cottrell et al patent. Accordingly, the rejection of Claims 1 and 5-11 under 35

U.S.C. 103(a) as being obvious over the Cottrell et al patent is maintained for the reasons of record.

Claim Rejections Over the Ibe Patent - 35 USC § 103

9. Claims 1, 7-9 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ibe (US Patent No. 4,818,751) for the reasons disclosed on pages 7 and 8 of the Office Action mailed January 3, 2003.

Response to Arguments Against the Ibe patent – 35 USC § 103

Applicant's arguments filed April 30, 2003 have been fully considered but they are not persuasive. Applicants argue against the rejection of the claims over the Ibe patent on the grounds that the Ibe patent does not implicit or explicit disclosed a particle carrying perfume. Applicants argue that the perfume in Examples 3 and 6 of the Ibe patent is free perfume, i.e. it is not absorbed, adsorbed, impregnated, or encapsulated in a particle or anything else. With regard to the phrase "particle carrying perfume" set forth in Claim 1, Applicants are reminded that there is a distinction between a new article of commerce and a new article, which is patentable. Any change in form may render an article new in commerce. But to be patentable it must be more efficacious or possess new properties by a combination with other ingredients and not merely a change of form, which has the advantages which one skilled in the art would expect from the change. *Glue Co. v. Upton* (USSC 1878) 97 US 3, 24 L Ed. 985.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the perfume being absorbed, adsorbed, impregnated, or encapsulated in a particle) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The Ibe patent is also obvious over the instant claims because the Examiner is required to give the broadest interpretation of terms set forth in the claimed invention and the instant specification does not defined "physically attached" in a way that can be interpreted as having a different meaning from the combination of the components in

Art Unit: 1623

the compositions set forth in the Ibe patent, especially when the components combined with the polysaccharides of the Ibe patent are in the form of an emollient lotion, which can be interpreted as comprising physically attached components. Accordingly, the rejection of Claims 1 and 5-11 under 35 U.S.C. 103(a) as being obvious over the Ibe patent is maintained for the reasons of record.

Summary

10. All the pending claims (Claims 1 and 5-11) are rejected.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Examiner's Telephone Number, Fax Number, and Other Information

12. For 24 hour access to patent application information 7 days per week, or for filing applications, please visit our website at www.uspto.gov and click on the button "Patent Electronic Business Center" for more information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is (703) 308-4621. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.


Art Unit: 1623

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, can be reach on (703) 308-4624. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

E. White

E.White


James O. Wilson
Supervisory Primary Examiner
Technology Center 1600